

II. REMARKS/ARGUMENTS

A. Regarding the Amendments

Claim 16 has been cancelled.

Claim 14 was amended to more specifically point out that the amino acids are present as free-form amino acids or as pharmacologically acceptable salts. This amendment is supported by original claim 16 and by the specification at page 6, ll. 24-26.

Claims 18, 19, 23, and 25 were amended by changing the concentration units for the amino acids from mg/L to mg/mL. This amendment corrects typographical errors and is supported by the specification at page 8, line 13 to page 9, line 20.

Claims 14, 15, 17-20, 22-25, 29, and 31 are pending in the application.

B. Rejection under 35 U.S.C. § 103

Applicant received an Advisory Action dated September 5, 2003, in which it was indicated that claims 1, 3-8, 10-13, 26, and 28 stood rejected and claims 14-20, 22-25, 29, and 31 were allowed. Applicant cancelled all rejected claims by an amendment after final dated November 12, 2003. Applicant was required to file an RCE because the patent office had lost the application. The Examiner has now rejected claims 14-20 and 22-25, which were previously indicated as being allowable, under 35 U.S.C. § 103 as allegedly being obvious over U.S. Patent No. 4,826,680, by Jaeger. Applicant traverses for the reasons explained below.

The Examiner alleges that Jaeger teaches pharmaceutical compositions that contain riboflavin and the amino acids glycine, alanine, serine, threonine, valine, and arginine. The Examiner alleges that the Jaeger compositions contain the very same components as those instantly claimed. The Examiner states that the only distinction between the Jaeger composition

and the instant invention is that the instant claims use the transitional language “consisting of,” whereas Jaeger uses “comprising.” The Examiner argues that Jaeger specifically teaches and provides motivation to use riboflavin in the presence of arginine, and alanine, glycine, serine, threonine, and valine to make pharmaceutical preparations.

The Jaeger compositions contain a mixture of two organ extracts. The first extract contains low molecular proteins and/or oligo-peptides and the second extract contains riboflavin associated with organ specific oligo-peptides. One of skill in the art understands that proteins and oligo-peptides are polymers of amino acids. In contrast, the amino acids of the present invention are present either as free-form amino acids or as pharmaceutically acceptable salts, not a proteins or peptides.

The closed “consisting of” language of the instant claims excludes all components from the claimed compositions, other than the components recited in the claims. Proteins and/or peptides are therefore excluded from the claims. Jaeger clearly does not teach or suggest compositions that do not include proteins/peptides because the whole point of the Jaeger reference centers on the particular protein/peptide extracts described therein.

In addition to proteins/peptides, the Jaeger compositions contain other components that are excluded by the instant claims. Claim 1, referenced by the Examiner, recites hydrolysable amino acids including cysteine sulfonic acid, aspartic acid, glutamic acid, praline, and isoleucine. These amino acids are not encompassed by the closed scope of the instant claims.

Further, the compositions of the instant claims include taurine, which is not taught or suggested in the Jaeger reference.

Applicant respectfully requests that the Examiner withdraw the rejection under 35 U.S.C. § 103 because the cited reference does not teach or suggest the presently claimed, closed compositions.

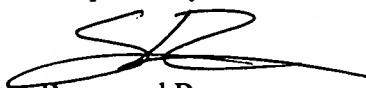
C. Allowable Subject Matter

The Examiner has objected to claims 29 and 31 as depending upon a rejected base claim, but maintains that these claims would be allowable if rewritten in independent form including all of the limitation of the base claim and any intervening claims. Applicant respectfully thanks the Examiner for indicating allowable subject matter and submits that the remaining claims are allowable in light of the arguments presented above.

* * *

The Examiner is invited to contact the undersigned patent agent with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



Raymond Reese
Reg. No. 47,891
Patent Agent for Applicant
Stanislaw R. Burzynski

HOWREY SIMON ARNOLD & WHITE, LLP
750 Bering Drive
Houston, Texas 77057-2198
(713) 787-1400

Date: April 22, 2004